
**Financial Institutions &
Insurance Committee**

HB 3167

Brief Description: Regulating small loans.

Sponsors: Representatives Clements and Morrell.

Brief Summary of Bill

- Requires the Department of Financial Institutions (DFI) to implement a common data base with real-time access through an internet connection for licensees who make small loans.
- Requires licensees to submit specified data before entering into a small loan or payment plan.
- Requires licensees to check to see if a prospective borrower has an outstanding small loan or payment plan.
- Prohibits licensees from entering into a small loan or payment if the prospective borrower has an outstanding small loan or payment plan.
- Exempts any identifying information in the database from public disclosure.
- Requires a licensee to inform the military chain of command of a military borrower when a small loan is made to a military borrower.

Hearing Date: 1/31/06

Staff: Jon Hedegard (786-7127).

Background:

Payday lending practices are regulated by the Department of Financial Institutions (DFI) under the Check Cashers and Sellers Act (Act), Chapter 31.45 RCW. The phrase "payday loan" refers to a type of short-term, high interest, unsecured loan that is typically offered to consumers by a business outlet offering check cashing services. In a typical payday loan transaction, the consumer writes the lender a post dated check and, in return, the lender provides a lesser amount of cash to the consumer after subtracting interest and fees. Following this initial transaction, the lender holds the check for a specified period, during which the consumer has the option of either

redeeming the check by paying the face amount to the lender or allowing the lender to cash the check after the loan period has expired.

The Act contains provisions for the licensing and regulation of businesses offering services related to check cashing and the selling of money orders, drafts, checks, and other commercial paper. The Act regulates payday lending practices and provides for regulation of licensees who are specifically authorized to issue small loans. No lender may lend more than \$700 to a single borrower at any one time. The lender may charge up to 15 percent for the first \$500. If the borrower has a loan in excess of \$500, the lender can charge up to 10 percent on the amount over \$500. For example, a lender could charge up to \$30 for a \$200 loan or up to \$85 for a \$600 loan.

Under the Act, licensees must maintain business books, accounts, and records. The books and accounts must be maintained for at least two years after a transaction. The DFI also has statutory authority to examine books, accounts, records, and files, or other information of licensees and persons that the agency has reason to believe is engaging in the business governed by Chapter 31.45 RCW.

Borrower and lenders may agree to a payment plan for payday loans. After four successive loans, and prior to default on the last loan, a borrower is entitled to convert his or her loans into a payment plan with the lender. Such payment plans are subject to the following conditions:

- a written agreement is required;
- the lender may charge the borrower a one-time fee in an amount up to the fee or interest on the outstanding principal;
- the agreement must allow the buyer not less than 60 days to pay off the loans; and
- the borrower must be allowed to pay off the loan in at least three payments.

The Director of the Department of Financial Institutions (Director) may impose the sanctions against any:

- licensee;
- applicant, or
- director, officer, sole proprietor, partner, controlling person, employee of a licensee, or applicant.

Sanctions may include:

- the denial, revocation, suspension, or conditioning of a license;
- an order to cease and desist from specific practices;
- the imposition of a fine not to exceed \$100 per day for each day's violation;
- the provision of restitution to borrowers or other injured parties; and
- the removal from office or banning from participation in the affairs of any licensee.

In 2005, the Legislature passed Engrossed Substitute Senate Bill 5415. The bill applied to military borrowers. It prohibits a licensee from garnishing wages paid for service in the armed forces when collecting any delinquent small loan, contacting the military chain of command of a military borrower in an effort to collect a delinquent small loan, and making a loan from a specific location to a known military borrower when the military borrower's commander has designated that location as off-limits to military personnel. Licensees are required to defer all collection activity against a military borrower during combat or combat support deployment and honor the terms of any repayment agreement between the licensee and any military borrower.

Summary of Bill:

The DFI must implement a common data base with real-time access through an internet connection for licensees who make small loans. The data base must allow the licensees and the DFI to determine if a particular person has any outstanding small loans.

Licensees must submit required data before entering into a small loan or payment plan. The data elements must include:

- the prospective borrower's name;
- the prospective borrower's social security number or employment authorization alien number;
- the prospective borrower's address;
- the prospective borrower's driver's license number or other identification required by the licensee;
- the amount of the transaction;
- the date of the transaction;
- the date that the transaction is closed; and
- additional information as is required by the director by rule.

The data must be in a format established by the DFI by rule. The DFI may impose a fee not to exceed \$1 dollar per submission.

A licensee must access the data base and determine the number of outstanding small loans and payment plans with an outstanding principal balance made to the potential borrower. A licensee may not make a small loan to a borrower if the borrower has:

- an outstanding small loan or an outstanding payment plan; or
- defaulted on a loan in the last 12 months.

A licensee may rely on the information contained in the data base and is not subject to an administrative penalty or civil liability as a result of relying on inaccurate information.

Identifying information contained in the data base is confidential and exempt from public disclosure. The information may only be accessed by licensees to verify whether any small loans are outstanding for a particular person and by the DFI.

The DFI may adopt rules to implement the database.

A licensee must inform the military chain of command of a military borrower when a loan is made to a military borrower.

Appropriation: None.

Fiscal Note: Requested on January 27, 2006.

Effective Date: July 1, 2006.